

IN THE
Supreme Court of the United States

October Term, 1979

No. 79-644

ATELIERS ROANNAIS DE CONSTRUCTIONS TEXTILES
and ARCT, INCORPORATED,

Petitioners,

v.

THE DUPLAN CORPORATION, *et al.*,

Respondents.

**BRIEF IN OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI**

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**BRIEF IN OPPOSITION TO PETITION
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Respondents¹ submit this brief in opposition to the petition for a writ of certiorari filed by Petitioners Ateliers Roannais de Constructions Textiles ("ARCT-France") and ARCT, Incorporated ("ARCT, Inc."). Respondents are concurrently filing a separate brief in opposition to two petitions for a writ of certiorari, one of which was filed by Deering Milliken Research Corporation ("DMRC") and Moulinage et Retorderie de Chavanoz ("Chavanoz") and the other of which was filed by Deering Milliken, Inc.

¹ The Duplan Corporation, Burlington Industries, Inc., Dixie Yarns, Inc., Frank Ix & Sons Virginia Corp., Hemmerich Industries, Inc., Jonathan Logan, Inc., Lawrence Texturing Corp., Leon-Ferenbach, Inc., Madison Throwing Co., National Spinning Company, Inc., Reliable Silk Dyeing Co., Inc., Schwarzenbach-Huber Co., Spring-Tex, Inc., Texelastie Corporation, Texfi Industries, Inc., United Merchants & Manufacturers, Inc.

("DMI"), in Nos. 79-658 and 79-659. All of these petitions seek review of the same decision below.²

For a full description of the parties and the relevant facts, respondents respectfully incorporate by reference their brief in opposition to the petitions filed in Nos. 79-658 and 79-659. In summary, however, respondents (sometimes hereinafter referred to as "Throwsters") produce yarn by texturing synthetic filaments such as nylon and polyester on false twist machines. Chavanoz, the owner of 22 patents (the "patents in suit") relating to alleged improvements in false twist machines and in the false twist process, granted petitioner ARCT-France, a manufacturer of textile machinery, an exclusive, world-wide license to make and sell false twist machines under those patents.

Since 1959, ARCT-France has sold false twist machines manufactured under the license from Chavanoz to its United States distributors. The exclusive United States distributor of such machines since 1966 has been petitioner ARCT, Inc. which purchased machines from ARCT-France and resold them to United States yarn manufacturers, including the Throwsters.³

Chavanoz purportedly granted to DMRC the exclusive right to use in the United States false twist machines embodying the improvements claimed in the patents in suit. DMRC, in concert with Chavanoz, ARCT-France and its distributors, required the Throwsters to sign a standard,

² Respondents have themselves filed a conditional cross-petition for a writ of certiorari (No. 79-660) seeking review of other aspects of the decision below, but only in the event that this Court grants the petition to which this brief is submitted in opposition or the petitions in Nos. 79-658 and 79-659.

³ From 1959 through 1965, ARCT-France's exclusive United States distributor was Whitin Machine Works ("Whitin"), which is not a party to this litigation. Whitin, too, purchased machines from ARCT-France and resold them to yarn manufacturers.

printed form production royalty agreement, under all of the patents in suit, in order to obtain delivery of the false twist machines that they had purchased from Whitin or ARCT, Inc.

At all relevant times, virtually the entire United States market in false twist machines was shared by petitioners' group⁴ and Leesona Corporation ("Leesona"), a United States manufacturer of, and licensor of patents relating to, false twist machinery. Like petitioners' group, Leesona required purchasers of its machines to sign a license imposing production royalties on each pound of yarn processed on the machines.

Based on several different theories of liability, the district court held that DMRC and Chavanoz combined and conspired with Leesona in violation of Sections 1 and 2 of the Sherman Act. The essence of the antitrust violations found by the district court was that DMRC/Chavanoz and Leesona agreed to maintain their respective and interdependent royalty programs and to stabilize the royalty rates thereunder and that certain joint actions were necessary if those interdependent programs were to continue. Those joint actions included the settlement of a patent dispute for the specific purpose, not of resolving legitimate disputes as to patent coverage, but of insuring that the patents of both would be preserved and the production royalty programs continued.

The district court held that petitioners ARCT-France and ARCT, Inc. were not liable to respondents for those violations. The Court of Appeals for the Fourth Circuit, however, while affirming as to DMRC and Chavanoz on the opinion below, reversed as to petitioners, holding them

⁴ As used herein, the term "petitioners' group" includes not only petitioners ARCT-France and ARCT, Inc. but also DMRC and Chavanoz.

fully liable for their role as "active, knowing participants in the horizontal conspiracy." (A416).

Opinions Below

The opinion of the Court of Appeals for the Fourth Circuit, dated March 26, 1979, is reported at 594 F.2d 979. The opinion of the District Court for the District of South Carolina, dated July 29, 1977, is reported at 444 F.Supp. 648. These opinions, as well as findings of fact expressly adopted by the district court, are reproduced in the Joint Appendix filed by petitioners.

Question Presented

The question presented by petitioners ARCT-France and ARCT, Inc. is simply not involved in the present case. Here, the court of appeals held that petitioners' conduct made them parties to an antitrust combination and thereby reversed the contrary *conclusion* of the district court.

Under these circumstances, the question presented should be framed as follows:

Is the conclusion of the district court that petitioners were not parties to an antitrust combination shielded by the 'clearly erroneous' test of Rule 52(a) of the Federal Rules of Civil Procedure?

Statement of the Case

In appealing to the court of appeals from the district court's ruling that ARCT-France and ARCT, Inc. were not participants in the unlawful horizontal antitrust combination among DMRC, Chavanoz and Leeson, the Throwsters did not attack the findings of fact of the district

court. Indeed, the Throwsters relied on those findings, which are summarized below, and argued that they established petitioners' liability as a matter of law.

With respect to ARCT-France, it was a signatory to the 1964 agreement which the Court of Appeals characterized as "the core of a scheme to stabilize and maintain production royalties on false twist machines and to monopolize the United States market for these machines" (A417).⁵ Moreover, the district court expressly found that ARCT-France actively participated in carrying out the various agreements among petitioners' group to restrict delivery of ARCT machines to Throwsters who had signed a standard DMRC royalty agreement (A14, 16, 18-21, 27-28, 32). That restriction—the key to the DMRC/Chavanoz royalty program—was, in turn, part and parcel of the horizontal combination with Leeson. Indeed, enforcement of the restriction by petitioners' group was essential to the successful operation of the combination. As fully discussed in our brief in opposition in Nos. 79-658 and 79-659, the objective of that combination was the perpetuation of the two interdependent royalty programs. As the parties perceived, communicated and agreed, one program could not work without the other and the DMRC program simply could not have continued without the active cooperation of ARCT-France in keeping machines out of the hands of non-licensees. The importance of the restraint is most graphically demonstrated by the following finding of the district court: While the restraint was in effect, everyone

⁵ Although ARCT-France was represented by Leo Soep in connection with the negotiation and execution of the 1964 agreement, the district court ruled that Soep's "guilty knowledge and intent . . . were not necessarily imputable to ARCT-France" because his "primary allegiance" to Chavanoz gave rise to a "conflict of interest situation." (A80). As discussed below, however, that conclusion of the district court is legally erroneous in light of the fact that Soep was a fully authorized representative of ARCT-France and that ARCT-France was aware of Soep's dual role.

was licensed; when it was abandoned, no one signed a license (A28-29, 345-46).

The findings of the district court also linked ARCT, Inc. to the combination and rendered it liable as a participant. Thus, the district court expressly found that ARCT, Inc., upon its organization in 1966, undertook to conform to the previously established arrangements to restrict delivery of ARCT machines to those who had signed the standard DMRC royalty agreement and "did in fact so restrict delivery." (A20).⁶ As noted above with respect to ARCT-France, the role of ARCT, Inc., as United States distributor of the machines, was crucial to the success of DMRC and Chavanoz in maintaining their own licensing program and keeping machines out of the hands of non-licensees. Moreover, it is clear that ARCT, Inc. knew that its cooperation in effectuating the licensing restraints was, in turn, absolutely essential to the success of the combination among petitioners' group and Leeson to stabilize and maintain their respective production royalties (A417-18). Robert F. Waters, the chief executive of ARCT, Inc. since its formation in 1966, had recognized the interdependence of the two programs while he had been associated with Whitin and knew the role it played in the deliberations concerning settlement (*see, e.g.*, A315-17, 331). In 1969, for example, Waters, as the district court found, admitted to Duplan that:

They [Whitin, DMRC and Chavanoz] did feel they had plenty of evidence to knock the [Leeson] patents out, but in this case there would have been no royalty

⁶ Even though ARCT, Inc. was not in existence at the time the combination began, the law is clear that one who joins a pre-existing combination or conspiracy is liable for all of the acts of that combination *ab initio*. *See, e.g., Hays v. United Fireworks Mfg. Co.*, 420 F.2d 836 (9th Cir. 1969).

collected by Leeson which would have made it all the harder for ARCT to collect *any* royalty (A331).

Despite these findings, the district court exonerated ARCT-France and ARCT, Inc. from liability, basing that legal conclusion on its findings that (a) Soep was acting in a dual capacity at the time the conspiracy was formed, (b) the two ARCT companies did not derive the same benefit from the conspiracy as the other defendants, and (c) there was some "friction and antagonism" between the ARCT companies and the others in petitioners' group concerning the DMRC licensing program (A77-80).

The Throwsters argued, and the Fourth Circuit held, that, as a matter of law, these findings were not exculpatory and, therefore, did not support the legal conclusions of the district court. First, Soep's dual capacity, as a representative of both ARCT-France and Chavanoz, was always fully known to ARCT-France which, nevertheless, continued to entrust him with its affairs regarding ARCT sales in the United States. Under these circumstances, there is no basis for applying any exception to the general rule that an agent's knowledge is imputed to his principal. *See Eitel v. Schmidlapp*, 459 F.2d 609 (4th Cir. 1972). Second, it is not necessary that all conspirators be similarly motivated or benefit from a conspiracy in the same manner or, indeed, that they benefit at all. *See, e.g., Perma Life Mufflers, Inc. v. International Parts Corp.*, 392 U.S. 134, 142 (1968); *Albrecht v. Herald Co.*, 390 U.S. 145, 149-50 (1968).⁷ Third, the friction and antagonism that existed

⁷ Although it was of the opinion that a finding of benefit to the ARCT companies was unnecessary to establish liability, the Fourth Circuit held the district court's conclusion that the ARCT companies realized no benefit from the conspiracy clearly erroneous because the evidence conclusively showed that their cooperation was an implied condition to their continuation in business. This was the

(Footnote continued)

between the ARCT companies and DMRC are legally insufficient to negate the existence of a conspiracy or participation therein. In *United States v. Singer Manufacturing Co.*, 374 U.S. 174, 193 (1963), this Court rejected as a matter of law the district court's "inference that the attitude of suspicion, wariness and self-preservation of the parties negated a conspiracy." Likewise, that the actions of ARCT-France and ARCT, Inc. may have been reluctant (or even if they had been coerced) is simply no defense, as the court of appeals stated, citing *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 161 (1948).

Having determined as a matter of law that the facts relied upon by the district court in the present case were not exculpatory,⁸ the court of appeals held that execution by ARCT-France of the settlement agreement itself, the full knowledge possessed by representatives of both ARCT companies and the active cooperation of the ARCT companies in restricting machine deliveries to DMRC use licensees—which was essential to the successful "day-to-day operation" of the "scheme to stabilize and maintain production royalties on false twist machines and to monopolize the United States market for these machines"—established their liability as co-conspirators in the horizontal combination with Leesona (A417-18).

(Footnote continued)

only "clearly erroneous" holding of the Fourth Circuit and it was plainly based on the lack of substantial evidence to support the district court's conclusion.

⁸ The district court's exoneration of petitioners rested on another erroneous premise not expressly discussed by the court of appeals. The district court found that the evidence was insufficient to establish that ARCT-France intended to violate the antitrust laws. In a civil case, however, such an intent—indeed, any guilty intent at all—is unnecessary to a finding of liability. *United States v. United States Gypsum Co.*, 438 U.S. 422, 436 n.13 (1978); see *United States v. Masonite Corp.*, 316 U.S. 265, 275 (1942).

Reasons Why the Writ Should Be Denied

I.

The Decision of the Fourth Circuit Court of Appeals Does Not Raise the Question Presented in the Petition.

As explained above, the Throwsters, in their appeal to the court of appeals, did not challenge the findings of the district court. Rather, the issue presented to, and decided by, the court of appeals was whether the findings of the district court established, as a matter of law, the liability of ARCT-France and ARCT, Inc. as participants in the antitrust combination among DMRC, Chavanoz and Leesona. The court of appeals concluded that ARCT-France and ARCT, Inc. were participants in that combination and thereby reversed the contrary conclusion of the district court.

Under these circumstances, the decision of the court of appeals is not controlled by Rule 52(a) of the Federal Rules of Civil Procedure. As this Court stated in *United States v. General Motors Corp.*, 384 U.S. 127, 141 n.16 (1966):

We note that, as in *United States v. Parke, Davis & Co.* . . . the ultimate conclusion by the trial judge, that the defendants' conduct did not constitute a combination or conspiracy in violation of the Sherman Act, is not to be shielded by the 'clearly erroneous' test embodied in Rule 52(a) of the Federal Rules of Civil Procedure. . . . As in *Parke, Davis* . . . the question here is not one of 'fact,' but consists rather of the legal standard required to be applied to the undisputed facts of the case.

Thus, it is clear that the court of appeals' decision on the combination issue presents no question concerning the construction and application of Rule 52(a).

II.

There Is No Conflict Among the Circuits Concerning the Scope and Application of Rule 52(a).

Even if Rule 52(a) were somehow applicable to the decision of the court of appeals, there would be no occasion for this Court to review that decision here on the basis of a conflict among the circuits concerning the scope and application of the Rule.

The definitive test for applying the "clearly erroneous" standard of Rule 52(a) was stated by this Court in *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948):

A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.

Accord, Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 123 (1969).

ARCT-France and ARCT, Inc. admit that the Fourth Circuit applies the *Gypsum* test (Pet. at 10-11). Nevertheless, they argue that this Court should grant their petition because some other circuits have allegedly ignored the *Gypsum* test by ruling that findings of fact supported by evidence will never be set aside. It would appear, however, that the lack of uniformity perceived by ARCT-France and ARCT, Inc. is more a difference in emphasis, resulting

from the decision reached in a particular case, than a substantive conflict.

In any event, even if there is a substantive conflict among the circuits, there is no conflict between the Fourth Circuit's decision in the present case and this Court's controlling decisions in *Gypsum* and *Hazeltine*. There can be no doubt that the Fourth Circuit was left with the definite and firm conviction that a mistake had been committed by the district court with respect to the liability of ARCT-France and ARCT, Inc. Therefore, to the extent that there is a conflict among the circuits, that conflict should be resolved in a case from a circuit that does not follow the decisions in *Gypsum* and *Hazeltine*.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari filed by ARCT-France and ARCT, Inc. should be denied.

Dated: December 7, 1979

Respectfully submitted,

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